

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgio	Team: Squad #2	CCRB Case #: 201907997	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/17/2019 9:30 PM	Location of Incident: 94th Precinct Stationhouse	Precinct: 94	18 Mo. SOL 2/17/2021	EO SOL 10/4/2021	
Date/Time CV Reported Tue, 09/03/2019 7:40 PM	CV Reported At: Precinct	How CV Reported: Mail	Date/Time Received at CCRB Tue, 09/10/2019 11:02 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fermin Bueno	10254	948710	094 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Hong Chen	00000	934189	094 PCT
2. POM Jerry Eustache	14290	956628	094 PCT
3. POM Lobsang Neshar	25270	963179	094 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Fermin Bueno	Abuse: Police Officer Fermin Bueno searched § 87(2)(b) s recording device.	
B.POM Fermin Bueno	Abuse: Police Officer Fermin Bueno deleted information on § 87(2)(b) s electronic device.	

Case Summary

Attorney § 87(2)(b) who was not present for this incident, filed this complaint with the 94th Precinct on behalf of his client, § 87(2)(b). The complaint was sent to IAB on September 3, 2019, generating Original Log #19-33167. On September 10, 2019, the CCRB received the complaint via IAB Log #19-33359.

On August 17, 2019, at approximately 9:30 p.m., Police Officer Fermin Bueno and Lieutenant Hong Chen, both of the 94th Precinct, arrested § 87(2)(b) on the street in front of 996 Manhattan Avenue in Brooklyn after allegedly observing her writing graffiti at a construction site. § 87(2)(b) was taken to the 94th Precinct stationhouse. While § 87(2)(b) was in custody, Police Officer Bueno accessed § 87(2)(b)'s smart phone and deleted two photographs § 87(2)(b) had taken at the scene of her arrest, one of Police Officer Bueno and one of Lieutenant Chen (**Allegation A: Abuse of Authority – Search of recording device – § 87(2)(g)** and **Allegation B: Abuse of Authority – Electronic device information deletion – § 87(2)(g)**). Police Officer Bueno then attempted to retrieve the photographs from § 87(2)(b)'s trash folder but was unsuccessful. § 87(2)(b) was later released with a Desk Appearance Ticket (Board Review 01).

§ 87(2)(b) was able to retrieve the photographs herself from the cloud after being released; the photographs are attached to IA #23 (Board Review 02). Body-worn camera (BWC) footage was obtained in the course of the investigation and is located in IAs #39-41 and 49 (Board Review 03-06). The BWC footage did not capture the allegations.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Fermin Bueno searched § 87(2)(b)'s recording device.

Allegation (B) Abuse of Authority: Police Officer Fermin Bueno deleted information on § 87(2)(b)'s electronic device.

§ 87(2)(b) provided a phone statement on September 18, 2019 (Board Review 07) and was interviewed at the CCRB on September 24, 2019 (Board Review 08). Lieutenant Chen was interviewed at the CCRB on January 16, 2020 (Board Review 09). Police Officer Jerry Eustache of the 94th Precinct was interviewed at the CCRB on January 16, 2020 (Board Review 10). Police Officer Bueno was interviewed at the CCRB on January 29, 2020 (Board Review 11).

It is undisputed that § 87(2)(b) was taken into police custody after Lieutenant Chen and Police Officer Bueno allegedly observed her writing graffiti. It is also undisputed that while § 87(2)(b) was being held at the 94th Precinct stationhouse, Police Officer Bueno accessed her phone and deleted two photographs from it without § 87(2)(b)'s consent.

In his CCRB interview, Police Officer Bueno said he did not have a good reason for deleting the photographs and had done so on an impulse. He realized that he made a bad decision shortly after deleting the photographs. He attempted to retrieve the photographs from the trash folder on § 87(2)(b)'s phone but was unable to do so. He then turned the phone off and replaced it where he found it. No other officers saw Police Officer Bueno delete the photographs and Police Officer Bueno did not speak to any officers about having deleted the photograph at the time.

Patrol Guide Procedure 203-29 states that individuals have a right to lawfully observe and/or record police activity. Officers must not delete media such as photographs or recordings from an individual's recording device or order an individual to delete pictures or recordings of police

activity (Board Review 13).

Patrol Guide Procedure 218-50 states that officers must have a search warrant, prisoner's consent, or the presence of exigent circumstances in order to lawfully search for information stored in a cellular telephone (Board Review 14).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- Police Officer Bueno has been a member-of-service for 9 years and has been a subject in 4 CCRB complaints and 6 allegations, of which 2 were substantiated in one case:
 - Case #201607174 involved two substantiated allegations of physical force against Police Officer Bueno. The Board recommended Charges and Police Officer Bueno was found Not Guilty after an APU trial and received no penalty from the NYPD.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of February 13, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 15).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date